

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 12, 2006 Session

JOHNNY C. BANE, SHERIFF OF SMITH COUNTY
v.
MICHAEL NESBITT, COUNTY MAYOR OF SMITH COUNTY

An Appeal from the Circuit Court for Smith County
No. 5743W John A. Turnbull, Judge

No. M2006-00069-COA-R3-CV - Filed December 14, 2006

This is a lawsuit filed by a sheriff to resolve a budget dispute. The sheriff sued the county executive, seeking funding to hire new personnel for the sheriff's department, as well as equipment and training for the new personnel and salary increases for current personnel. The trial court authorized the hiring of several new employees and the reinstatement of three clerks cut from the previous year's budget. The trial court also authorized the funding necessary to equip and train the additional personnel and awarded a salary increase for the position of chief deputy. The county executive now appeals the decision of the trial court. We reverse the trial court's order as to the hiring of an additional detective, finding that the trial court did not have authority to approve the hiring of the detective. We also modify the judgment to delete funding for the equipment and training of the detective. We affirm the remainder of the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed in part,
Reversed in part, and Modified in part.**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Gary Vandever, Lebanon, Tennessee, for Defendant/Appellant Michael Nesbitt, County Mayor of Smith County.

E. Guy Holliman and Debbie C. Holliman, Carthage, Tennessee, for Plaintiff/Appellee Johnny C. Bane, Sheriff of Smith County.

OPINION

This is a lawsuit filed by Plaintiff/Appellee Johnny C. Bane ("Sheriff Bane"), the Sheriff of Smith County, Tennessee, against Defendant/Appellant Michael Nesbitt ("Mayor Nesbitt"), the County Mayor of Smith County, Tennessee. Sheriff Bane filed this lawsuit against Mayor Nesbitt pursuant to Tennessee Code Annotated § 8-20-101 *et seq.*, which provides in pertinent part, "The

sheriff may. . . make application to the judge of the circuit court in the sheriff's county, for deputies and assistants, showing the necessity therefor, the number required and the salary that should be paid each." T.C.A. § 8-20-101(a)(2) (Supp. 2005).

As background, Smith County is in middle Tennessee. To the north of Smith County is Macon County, which is similar to Smith County in size and population, and to the west of Smith County is Wilson County, which is a substantially larger county. In 2004, the estimated population of Smith County was approximately 18,400—an increase of 4% since the 2000 census. There are 753.87 miles of private, city, federal, state, and county roads in Smith County, including 37.54 miles of Interstate 40. There are also 225 miles of shoreline; Smith County has one lake, Cordell Hull Lake, and two major rivers, including the Cumberland and Caney Fork. In addition, the County has a dam, a marina, and a railroad.

Sheriff Bane has been the Sheriff of Smith County since 1982. The duties of the Sheriff's Department are many; they include keeping the peace, detecting and preventing crimes, serving process, securing evidence, operating the county jail, providing security to the county courthouse, transporting inmates to various locations, and patrolling the roads. The Sheriff's Department in Smith County also escorts funeral processions and provides security to the county school system, including school sporting events. At the time this lawsuit was filed, the Smith County Sheriff's Department consisted, in pertinent part, of one chief deputy, five sergeant deputies, nine regular deputies,¹ two detectives, four dispatchers, four record-keeping clerks, ten jailors, and a head cook.

Mayor Nesbitt has been the County Mayor of Smith County since August 2002. He has primary responsibility for the County's finances, working with the Board of County Commissioners and its Budget and Finance Committee to set the annual budgets for the various County departments. For the fiscal year 2004/2005, the County Commissioners approved a budget of approximately \$1.8 million dollars for the Sheriff's Department.

On September 30, 2004, Sheriff Bane filed the instant petition against Mayor Nesbitt, asserting that he could not "properly and efficiently conduct the affairs and transact the business" of the Sheriff's Department without funding to hire additional personnel. In his complaint, Sheriff Bane asserted that in light of recently enacted federal and state mandates requiring his office to perform additional functions, as well as the increase in population, drug trafficking, and traffic and crime on Interstate 40, the department needed approximately nine more deputies, approximately ten more assistants, the equipment necessary for the new hires to conduct their duties, and salary increases for all current personnel.

¹Of these nine deputies, two are full-time school resource officers and one is a full-time courthouse security officer. The remaining six regular deputies, along with the five sergeant deputies, are characterized by Sheriff Bane as "road deputies." The primary duties of the road deputies are serving process, transporting inmates, and patrolling the roads of Smith County.

In response, Mayor Nesbitt filed an answer denying Sheriff Bane's allegations. On May 23, 2005, Mayor Nesbitt also filed a motion to dismiss, arguing that Sheriff Bane's petition should be dismissed because it did not comply with T.C.A. § 8-20-101 in that it did not specifically list the number of deputies and assistants needed, nor did it show a necessity for additional personnel or report the salary that each should be paid. Subsequently, the parties entered into an agreed order allowing Sheriff Bane to amend his complaint.

In the amended complaint, filed on October 4, 2005, Sheriff Bane detailed the number of personnel requested and their salaries as follows: seven regular deputies to be paid at a rate of \$14.00 per hour; one sergeant deputy to be paid at a rate of \$15.00 per hour; one detective to be paid at a rate of \$15.00 per hour; five jailors to be paid at a rate of \$13.00 per hour; one cook to be paid at a rate of \$12.50 per hour; three courthouse security officers to be paid at a rate of \$12.25 per hour; and two clerks to be paid at a rate of \$14.42 per hour.

Three days prior to the agreed trial date, Sheriff Bane filed a motion to further amend his complaint. In pertinent part, the motion asserted that since the filing of the lawsuit, the Board of County Commissioners for Smith County passed the 2005/2006 budget for the Sheriff's Department and, in so doing, deleted three clerk positions and one part-time dispatcher.² Consequently, Sheriff Bane asked that his complaint be amended to request an additional dispatcher at \$12.25 per hour and the reinstatement of the three clerks at \$14.00 per hour.³ The motion was granted on the morning of the trial, November 7, 2005. The case then proceeded to trial.

During the trial, Sheriff Bane presented extensive testimony and entered numerous exhibits into evidence. Chief Deputy Guinn Gregory ("Chief Deputy Gregory") of the Smith County Sheriff's Department testified about the need for additional road deputies. Chief Deputy Gregory stated that, at the time of trial, county deputies were spending at least 50% of their time transporting inmates to mental facilities, juvenile detention facilities, and court hearings all over the State.⁴ Further, because of the shortage of clerks, county deputies were logging, filing, and securing their

²In addition to the 2005/2006 budget, the Board also passed a resolution directing the County Mayor not to issue checks or purchase orders to any departments where the requested expenditure would exceed the amount budgeted by the County Commissioners. The resolution further mandates that any such request must first be reviewed by the Budget Committee and then approved by the full Commission. As noted above, the Sheriff's Department was budgeted approximately \$1.8 million dollars for fiscal year 2004/2005. The Department's estimated expenditures for fiscal year 2004/2005, however, totaled \$2,236,746. For fiscal year 2005/2006, the Sheriff's Department was budgeted \$1,908,380, approximately \$300,000 less than its estimated expenditures in the preceding fiscal year.

³Sheriff Bane also alleged that the 2005/2006 budget reduced his medical budget by over \$100,000. Consequently, he also asked that his complaint be amended to add requests for medical staff, including a licensed practical nurse, a registered nurse, and a nurse practitioner or physician's assistant to be paid salaries of \$14,000, \$27,000, and \$30,000 respectively. At the November 7 hearing, however, counsel for Sheriff Bane withdrew this portion of the motion.

⁴An exhibit entered at trial indicated that the number of transports to mental facilities totaled 382 in 2002, 401 in 2003, 637 in 2004, and 532 through October 31, 2005.

own evidence. The number of unserved warrants in Smith County had risen to 1,773 as of October 31, 2005; Chief Deputy Gregory asserted that both juvenile crime and domestic disturbances, which require the presence of two deputies, had increased in Smith County. His testimony also indicated that because of increasing demands on the county deputies—including providing deputies for security at high school football games and escorting approximately 500 funeral processions per year—there were typically only one or two deputies available per shift to patrol the county roads and that the department as a whole was incurring substantial overtime.⁵ For comparison, Sheriff Bane presented the testimony of Terry Ash, Sheriff of Wilson County (“Sheriff Ash”), and Jerry Abston, current Executive Director of the Tennessee Corrections Institute and former Sheriff of Putnam County. According to their testimony, nationally recognized staffing formulas indicate that generally, for smaller counties, law enforcement departments should employ approximately one or two peace-keeping officers per thousand citizens.⁶

Sheriff Bane presented evidence regarding the need for additional courthouse security officers. Eugene Roberts, Smith County’s only full-time courthouse security officer, testified that the courtrooms are not safe for the judges, witnesses, juries, or attorneys. Roberts’ testimony indicated that there were no check stations at either of the two entrances to the courthouse. He further indicated that there had been numerous incidents involving weapons, drugs, and attempted escapes by prisoners, despite the fact that the Sheriff’s Department would bring in other deputies to assist when more than one courtroom was in session. In his testimony, Sheriff Bane acknowledged that his department was at that time in violation of a 1998 court order, which mandates additional courthouse security. Sheriff Bane also entered into evidence an exhibit showing the state’s Minimum Courtroom Security Standards, which were adopted in 1992. These standards require an armed guard in each courtroom during sessions and a minimum of two hand-held detectors or magnetometers per county.

Evidence was also presented on the need for additional jailors. Chief Deputy Gregory testified that, at the time of trial, Smith County had ten jailors, which allowed for one female jailor and one male jailor per shift. When those jailors were called to assist deputies with other tasks, such as transporting inmates, the jail was simply unattended. The trial court also heard from John Hanna, Jr., who inspects jails and provides staffing analysis for the Tennessee Corrections Institute. Hanna inspected the Smith County jail in 2003, 2004, and 2005, and testified that, as of the time of trial, the jail had been decertified due, in part, to a lack of proper staffing. Sheriff Bane introduced into evidence exhibits showing an increase in the average daily count of inmates housed at the Smith County jail. He also presented witnesses who testified as to the number of jailors employed by the Wilson County Sheriff’s Department (36) and the Macon County Sheriff’s Department (20).

⁵Chief Deputy Gregory testified that, as an example, he works seventy to eighty hour weeks. Sheriff Bane offered documentary proof listing in detail the number of overtime hours logged by his department.

⁶Sheriff Ash also testified generally on the increasing demands for sheriff’s departments to be responsible for transporting inmates to mental hospitals and court hearings in various jurisdictions.

Sheriff Bane testified on the need for an additional dispatcher. Sheriff Bane explained that the Sheriff's department operates three phone lines twenty-four hours a day, seven days a week. The department dispatchers, he stated, dispatch not only for the Sheriff's Department, but also for the South Carthage and Gordonsville Police Departments, the Tennessee Wildlife Resource Agency, and periodically for the Tennessee Highway Patrol. According to his testimony, without even considering vacation, sick days, training, and maternity leave, four dispatchers working eight-hour shifts could not cover the operating hours required during the week.

Chief Deputy Gregory testified generally as to the need for an additional detective. The Chief Deputy said that the Sheriff's Department's two detectives were unable to properly and efficiently investigate and secure the evidence of all of the crimes committed in Smith County, including elder abuse, child abuse, sexual abuse, and domestic violence cases. Utilizing domestic violence cases as an example, Chief Deputy Gregory testified that most of the victims had to sign their own warrants and conduct about half of their own investigation in aid of the prosecution. His testimony further indicated that after a detective does an initial investigation of a crime in Smith County, the department does not have sufficient personnel to follow-up and gather the statements, photographs, fingerprints, and other evidence necessary for prosecution.

The testimony also addressed the need for additional record-keeping clerks. Chief Deputy Gregory testified that, over the two or three years preceding the trial, numerous federal and state mandates had been enacted which had increased the amount of data entry per detainee. The requirements stemming from state and federal mandates included the sex offender's registry that had to be updated every three months, "R84 forms" showing case dispositions, "TIBRS" forms for criminal statistics, and the "dual fingerprints" data required by the Tennessee Bureau of Investigation. Sheriff Ash of Wilson County corroborated this testimony, stating that the recordkeeping obligations for the Wilson County Sheriff's Department had tripled due to the federal and state mandates. According to Sheriff Ash's testimony, a sheriff's department that fails to comply with these mandates in a timely manner risks decertification, and if a department is decertified, it loses its data entry terminal and thereafter must enter all of the required data manually.

In addition, Sheriff Bane entered into evidence a document itemizing the expenditures necessary to hire the requested personnel, including the cost of bullet proof vests, uniforms, guns, belts, and training. He also presented testimony and exhibits showing the salaries of employees in the Wilson and Macon County Sheriff's Departments. This included evidence that the Chief Deputy for Wilson County earns approximately \$55,000 per year, and the Chief Deputy for Macon County earns approximately \$32,000 per year.

At the conclusion of Sheriff Bane's proof, Mayor Nesbitt testified for Smith County. Mayor Nesbitt first testified generally as to the Sheriff's Department budgets for fiscal years 2003/2004, 2004/2005, and 2005/2006, and the expenditures in excess of the budgeted amounts. Mayor Nesbitt reported that the 2004/2005 budget for the Smith County Sheriff's Department was approximately \$1.8 million, but that the Sheriff's Department actually spent \$2.2 million that year. He asserted that while the 2005/2006 budget of approximately \$1.9 million dollars for the Sheriff's department was

lower than the actual expenditures for that department in the preceding fiscal year, it exceeded the previous year's budget by \$100,000, considering pay raises and six new police cars. Mayor Nesbitt acknowledged that the Sheriff's Department needs "more help in certain areas," but contended that the budgeted amounts, if properly allocated and managed, were sufficient.

After hearing the parties' proof and listening to arguments of counsel, the trial court rendered oral findings of fact and conclusions of law. The trial court observed that the "safety provided to the Smith County courthouse is abhorrent;" that the "present staffing of the jail is woefully inadequate;" that the "four dispatchers [cannot] cover twenty-four hours a day, seven days a week;" and that the annual salary for the position of Chief Deputy is "out of whack." The trial judge concluded that "the Sheriff has by the preponderance of the evidence shown a need for additional personnel if he is going to be able to safely and properly carry out his duties as sheriff." On November 22, 2005, the trial court incorporated these findings and conclusions into the Final Order:

The Court finds that Plaintiff, Johnny C. Bane has proven by the preponderance of the evidence that additional sheriff's department personnel is needed if he is going to be able to safely and properly carry out his duties as sheriff and

It is, therefore, ORDERED, ADJUDGED and DECREED that:

1. Smith County and the Smith County Commissioners shall appropriate, fund and pay for **five** new deputies at a salary of \$11.67 per hour which equals \$26,094.12 per officer per year. Total regular salary allocation for five new deputies for the Smith County Sheriff's Budget shall be \$130,470.60.

2. Smith County and the Smith County Commissioners shall appropriate, fund and pay for **two** additional courthouse security officers at a salary of \$11.67 per hour, which equals \$26,094.12 per officer per year. Total regular salary allocation for the additional courthouse security officers for the Smith County Sheriff's Budget shall be \$52,188.24.

3. Smith County and the Smith County Commissioners shall appropriate, fund and pay for **five** additional jailers at a salary of \$10.96 per hour, which equals \$22,796.80 per officer per year. Total regular salary allocation for five new jailors for the Smith County Sheriff's Budget shall be \$113,984.00.

4. Smith County and the Smith County Commissioners shall appropriate, fund and pay for **one** additional dispatcher at a salary of \$10.96 per hour, which equals \$22,796.80 per year. Total regular salary allocation for this additional dispatcher for the Smith County Sheriff's Budget shall be [\$]22,796.80.

5. Smith County and the Smith County Commissioners shall appropriate, fund and pay for **one** additional detective at a salary of \$12.31 per hour, which equals \$27,525.16 per year. Total regular salary allocation for the additional detective for the Smith County Sheriff's Budget shall be \$27,525.16.

6. Smith County and the Smith County Commissioners shall appropriate, fund and pay for **two** additional clerks at a salary of \$12.00 per hour, which equals

\$24,960.00 [per year]. Total regular salary allocation for the additional clerks for the Smith County Sheriff's Budget shall be \$49,920.00.

7. The Court finds that the **three** existing clerks are needed in addition to the two new clerks and shall continue to be funded by Smith County and the Smith County Commissioners will continue to appropriate, fund and pay for the existing clerks.

8. Smith County and the Smith County Commissioners shall also appropriate, fund and pay for the proper social security taxes, insurance benefits, retirement and other regular salary and benefits for the new personnel hired.

9. Smith County and the Smith County Commissioners shall appropriate, fund and pay for necessary equipment and training for the new personnel hired. For bullet proof vests, \$8,000.00 will be allocated for the 8 new officers. Each of the 8 new officers will be allocated \$2,500 for uniforms; for a total allocation from the Smith County Budget of \$20,000.00. For the 8 new officers psychological evaluations, \$200.00 per officer will be allocated. For a total of \$1,600.00 and for law enforcement training for the 8 additional officers \$2,000.00 per officer is allocated for a total of \$16,000.00.

10. Smith County and the Smith County Commissioners shall appropriate, fund and pay for a pay increase in the position of the Chief Deputy from \$29,837.97 (\$12.85 per hour) to \$40,000.00 (\$17.89 per hour).

(bold in original.) From this order, Mayor Nesbitt now appeals.

On appeal, Mayor Nesbitt argues that the trial court erred in awarding Sheriff Bane the following relief: (1) five additional deputies; (2) two additional courthouse security officers; (3) five additional jailors; (4) one dispatcher; (5) one additional detective; (6) two additional clerks; (7) reinstating the three clerks cut from the 2005/2006 budget; (8) ordering Mayor Nesbitt to fund and pay for the necessary equipment and training for the new officers; and (9) awarding a pay increase to \$40,000 per year for the position of Chief Deputy.

Cases involving Tennessee Code Annotated § 8-20-101 are reviewed on appeal no differently from other lawsuits. *Dulaney v. McKamey*, 856 S.W.2d 144, 146 (Tenn. Ct. App. 1992). Our standard of review, therefore, is *de novo* upon the record, according a presumption of correctness to the trial court's findings of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *see Boarman v. Jaynes*, 109 S.W.3d 286, 290 (Tenn. 2003) (citing *Fields v. State*, 40 S.W.3d 450, 456 (Tenn. 2001)). The trial court's legal conclusions are reviewed *de novo* and accorded no presumption of correctness. *Easterly v. Harmon*, No. 01A01-9609-CH-00446, 1997 WL 718430, at *3 (Tenn. Ct. App. Nov. 19, 1997) (citing *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995)).

The numerous duties of the sheriff were originally prescribed by the common law, but are now largely defined by statute. *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn. Ct. App. 1992); *see also Roberts v. Lowe*, No. 03A01-9610-CC-00333, 1997 WL 189345, at *3 (Tenn. Ct. App. Apr.

16, 1997). These statutory duties generally fall into four broad classes: (1) serving process, see T.C.A. § 8-8-201(1)(4-32); (2) attending the courts, see T.C.A. §§ 5-7-108, 8-8-201(a)(2); (3) operating the jail, see T.C.A. §§ 8-8-201(a)(3), 8-8-221, 41-2-108, 41-4-101; and (4) conserving the peace, see T.C.A. §§ 8-8-213, 38-3-102. *Smith*, 834 S.W.2d at 313; *Roberts*, 1997 WL 189345 at *3; *Jones v. Mankin*, No. 88-263-II, 1989 WL 44924, at *4 (Tenn. Ct. App. May 5, 1989).

In order to perform the various duties of the sheriff's department, the sheriff must rely upon deputies and assistants, whose expenses are included in the budget for the sheriff's department enacted by the county legislative body. While the county legislative body is generally required to fund the operations of the county sheriff's department, *see* T.C.A. § 8-20-120, the legislative body may choose not to approve all of the funding requests submitted by the sheriff. *See Jones*, 1989 WL 44924 at *4-5. Budgeting decisions are essentially legislative, requiring a balancing of priorities in light of available funds. *Id.* at *4.

Should the sheriff's proposed budget be rejected by the county legislative body, as an independently elected official, he is not without recourse. Despite the essentially legislative nature of the budget process, the General Assembly has cast the courts "in the role of reluctant arbiters" of such budget disputes. *Id.* at *3. A sheriff whose request for personnel-related funding is denied by his or her local legislative body may file an application for review of the funding request with the judge of the circuit court in the sheriff's county, pursuant to T.C.A. § 8-20-101 *et seq.* Section 8-20-101 provides:

(a) Where any one (1) of the clerks and masters of the chancery courts, the county clerks and the clerks of the probate, criminal, circuit and special courts, county trustees, registers of deeds, and sheriffs cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person's office in the following manner and under the following conditions, namely:

* * *

(2) The sheriff may in like manner make application to the judge of the circuit court in the sheriff's county, for deputies and assistants, showing the necessity therefor, the number required and the salary that should be paid each; provided, that in the counties where criminal courts are established, the sheriff may apply to a judge of such criminal court.

T.C.A. § 8-20-101(a) (Supp. 2005). Once such an application is filed, the trial court is authorized to "hear proof either for or against the petition" and "may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify." T.C.A. § 8-20-102 (2002).

As construed by the Tennessee Supreme Court, sections 8-20-101(a) and 8-20-102 require the office holder to demonstrate “an inability to discharge the duties of a particular office by devoting his or her entire working time thereto” and to “show the necessity for assistants, the number of assistants required, and the salary each should be paid.” *Boarman*, 109 S.W.3d at 291. Stated differently, the office holder must “present detailed evidence that has the cumulative effect of showing that the work he is required to perform by law cannot be done with existing manpower.” *Dorning v. Bailey*, No. M2004-02392-COA-R3-CV, 2006 WL 287377, at *8 (Tenn. Ct. App. Feb. 6, 2006) (quoting *Reid v. Anderson*, No. 84-57-II, 1985 Tenn.App. LEXIS 2776, *4 (Tenn. Ct. App. Mar. 27, 1985)). “Once the necessity of employing assistants is established, the appropriate trial court is empowered to determine the number of assistants needed and their salaries.”⁷ *Boarman*, 109 S.W.3d at 291.

The courts are not, however, authorized to compel the county legislative body to fund all budget requests proven to be necessary. Rather, the court may consider only funding requests that relate to certain types of duties of the sheriff.

Historically, the duties of the sheriff have been categorized based on the manner of compensation for the services required. This is described generally in *State ex rel. Windham v. LaFever*, 486 S.W.2d 740 (Tenn. 1972):

The duties of the sheriff generally fall into two categories:

- (1) The duties imposed and defined by statute. The fee to be paid for the performance of these duties generally is prescribed by statute.
- (2) Duties which the common law annexes to the office of sheriff (some of which are now covered by statute) for which no fee or charge is specified in payment. These duties are generally referred to as “ex officio” duties or services.

⁷Mayor Nesbitt cites to *Cunningham v. Moore County*, 604 S.W.2d 866 (Tenn. Ct. App. 1980), asserting that Sheriff Bane must:

prove in numerical quantity the number of times per day, week, month or year the Sheriff is called upon to perform the statutory duties of his office, that he and his previously authorized employees have devoted their full working time to the performance of such duties and that their combined efforts have not been sufficient to perform all such duties, some of which have not been performed for this reason.

Id. at 868. Although the Sheriff is certainly obligated to put on persuasive proof of the necessity for his funding requests, the level of proof described above in *Cunningham* seems unduly onerous and inconsistent with the Supreme Court’s construction of sections 8-20-101 and -102. *See Boarman*, 109 S.W.3d at 291.

Id. at 742. Currently, most of the duties of the sheriff, including the ex officio duties, are covered by statutes.⁸ Moreover, while there was presumably ample reason originally for treating ex officio duties differently, in current times, the ex officio duties of the sheriff appear to be as necessary to the operation of the department as the historically statutory duties. For example, despite the fact that the sheriff is statutorily required to be the “principal conservator of the peace in his county,” he cannot charge a fee for investigating or preventing crime; therefore, detective work and patrolling the county roads are considered “ex officio” duties. *See Jones*, 1989 WL 44924 at *6; *Dorning*, 2006 WL 287377 at *8. In contrast, because the sheriff is required by statute to operate the jail and is authorized to charge a fee for it, the employees of the jail would not be performing ex officio duties. *See Jones*, 1989 WL 44924 at *7.

Nevertheless, the distinction between the sheriff’s historically “statutory” duties, for which a fee can be charged, and his “ex officio” duties, for which no fee is charged, remains important when budget disputes arise. This is because the statutes empowering the courts to decide such disputes have been construed to limit the court’s authority to considering “only . . . requests [for personnel-related expenditures] that are related to statutory duties for which the sheriff collects a fee.” *Jones*, 1989 WL 44924 at *5; *see also Dorning*, 2006 WL 287377 at *6-7.⁹

Thus, while the courts have been assigned the essentially legislative task of determining the appropriate budget for the county sheriff’s department, they may do so only with respect to duties for which the sheriff may charge a fee. In light of these parameters, we consider the issues raised on appeal.

Road Deputies

Mayor Nesbitt first asserts that the trial court erred in ordering funding for five additional deputies. A request for additional “road deputies” presents a difficult question under the statutory scheme in T.C.A. § 8-20-101 *et seq.*, because road deputies often perform ex officio and public service duties in addition to statutory duties that generate fees. The testimony in the trial court below was typical of such requests. It indicated that the duties of Smith County road deputies include: (1) transporting inmates; (2) serving process; (3) patrolling the county roads; (4) providing security at high school football games; and (5) escorting funerals. Of these, the first two are fee-generating

⁸ “[A]n ‘ex officio service’ is defined: ‘Every service [an office holder] is required by law to perform, for which no fee or charge is specified.’ ” *State v. O’Dell*, 84 S.W.2d 577, 578 (Tenn. 1935) (quoting *Hagan v. Black*, 17 S.W.2d 908, 909 (1929)).

⁹ Section 8-24-111 of the Tennessee Code Annotated provides that the “county legislative bodies of the different counties shall . . . make such allowance as they, in their discretion, think sufficient to compensate their sheriffs for ex officio services.” T.C.A. § 8-24-111 (2002). Accordingly, the county legislative body has been deemed to possess exclusive control over the budgeting process for the sheriff’s ex officio duties, and the courts may not order the county legislative body to fund such services. *See Smith*, 834 S.W.2d at 314; *Jones*, 1989 WL 44924 at *5.

statutory duties, see T.C.A. § 8-21-901(a)(1), (3) (2002), and the latter three are ex officio or public service works.¹⁰

A similar situation was presented in *Jones v. Mankin*, No. 88-263-II, 1989 WL 44924 (Tenn. Ct. App. May 5, 1989). In that case, the Sheriff of Rutherford County filed a section 8-20-101 application for additional deputies because he wanted at least three deputies patrolling the streets at all times. *Id.* at *8. Testimony showed that, in addition to patrolling, his current deputies were performing various public services, including school zone patrols, funeral escorts, neighborhood watch and business crime awareness programs, and motorist assists. *Id.* None of these services were fee-generating. The deputies, however, also took “care of the court system,” guarded and transported prisoners, and served process—all activities for which a fee could be charged. *Id.* at *8-9. Based, in part, on evidence showing that the demands for the fee-generating services were increasing, the court determined that the sheriff had properly demonstrated that additional road deputies were necessary to enable him to efficiently discharge his statutory duties and awarded the sheriff four additional deputies. *Id.*

In the instant case, when Sheriff Bane filed his application for additional personnel, he employed fifteen “deputies,” eleven of which were deemed “road deputies.” At trial, he requested eight additional road deputies, and in support of this request, he presented the testimony of several witnesses and a plethora of exhibits. The proof indicated that Smith County deputies spend a substantial amount of time transporting inmates to mental and juvenile facilities, as well as to court hearings, all over the state. In addition, Sheriff Bane offered evidence showing that his department has a substantial backlog of unserved warrants, and that crime, in particular juvenile crime and domestic violence, is increasing in Smith County. After thoroughly reviewing the record before us, we cannot say that the evidence preponderates against the trial court’s finding that five additional road deputies are necessary for Sheriff Bane to properly and efficiently discharge his statutorily mandated duties. Accordingly, the trial court is affirmed on this issue.

Courthouse Security Officers, Jailors, and Record-Keeping Clerks

Mayor Nesbitt argues that the trial court erred in approving the hiring of two additional courthouse security officers, two jailors, two new clerks, and the reinstatement of the three clerk positions eliminated by the Smith County Board of County Commissioners. Sheriff Bane has a

¹⁰As Sheriff Bane points out, sections 8-8-213, 38-3-102, and 8-8-201 of the Tennessee Code Annotated have recently been amended, expanding the duties of the sheriff as defined by statute. Under sections 8-8-213 and 38-3-102, “patrol[ling] the roads of the county” is now a codified peace-keeping duty of the sheriff’s office. *See* T.C.A. §§ 8-8-213, 38-3-102 (Supp. 2005). Further, section 8-8-201, which lists various duties of the sheriff in some specificity, now includes subsection (b)(2), which reads: “The sheriff shall perform such other duties as are, or may be, imposed by law *or custom*.” T.C.A. § 8-8-201 (Supp. 2005) (emphasis added). Sheriff Bane asserts that providing security at high school football games and escorting funerals are customary duties of the sheriff and, thus, constitute statutory duties. We note, however, that the sheriff is not statutorily authorized to charge a fee for patrolling the roads, securing the school system, or escorting funerals. These amendments, therefore, do not affect our analysis under T.C.A. § 8-20-101 *et seq.*

statutory duty to furnish deputies to the courts, see T.C.A. §§ 5-7-108, 8-8-201(a)(2), 37-1-213. He also has a statutory duty to operate the jails, see T.C.A. §§ 8-8-201(a)(3), 41-4-101. Finally, sheriffs are required to maintain various data processing services, see, e.g., T.C.A. §§ 38-3-122, 38-10-102, 39-17-1351. For each of these duties, Sheriff Bane is authorized to charge and collect fees, see, e.g., T.C.A. §§ 8-21-901(a)(3)-(5), 41-4-132, 41-8-106. Under T.C.A. § 8-20-101(a)(2), therefore, a trial court has the authority to approve the hiring of additional personnel in these areas when additional employees are necessary for the sheriff to discharge his statutory duties. Having found that the trial court had authority to approve the hiring of such personnel, we must review the evidence to determine if it preponderates against the trial court's decision on this issue.

The proof presented at trial clearly supports the trial court's finding that additional courthouse security officers and jailors are necessary to enable Sheriff Bane to fulfill his statutory duties. Regarding record-keeping clerks, moreover, Sheriff Bane offered evidence showing a significant additional burden created by federal and state mandates requiring sheriffs to process and enter a variety of data. The record reflects that Smith County clerks are unable to keep up with the demands created by these mandates, as well as the consequences of failing to do so. The trial court found the evidence on this issue, including the testimony of Chief Deputy Gregory and Sheriff Ash, "persuasive." We give great weight to the trial court's determination of the credibility of the witnesses, since the trial judge has the opportunity to observe the witnesses in their manner and demeanor while testifying and is in a better position than this Court to decide those issues. *McCaleb v. Saturn Corp.*, 910 S.W.2d 412, 415 (Tenn. 1995); *Whitaker v. Whitaker*, 957 S.W.2d 834, 837 (Tenn. Ct. App. 1997).

Accordingly, we find that the evidence does not preponderate against the trial court's approval of the hiring of additional courthouse security officers, jailors, and record-keeping clerks. The trial court's decision to award two courthouse security officers, five jailors, two new clerks, and to reinstate the three existing clerks, is affirmed.

Dispatchers

Mayor Nesbitt also contends that the trial court erred in approving the hiring of an additional dispatcher. Sheriffs do not have a statutory duty to provide dispatching services. *Cunningham v. Moore County*, 604 S.W.2d 866, 868 (Tenn. Ct. App. 1980). This Court has held, however, that:

[D]ispatching is [a] necessary and reasonable support activity that assists modern sheriffs' departments in carrying out all their statutory duties. We do not read Tenn. Code Ann. §§ 8-20-101(2) and 8-20-120 so narrowly that they cannot apply to personnel required to support the personnel who are performing the statutory duties. The courts may approve the cost of support personnel when they are required.

Jones, 1989 WL 44924 at *5 (citing *State ex rel. Doty v. Styke*, 199 S.W.2d 468, 476 (Tenn. Ct. App. 1946)). Therefore, under appropriate circumstances, the court may grant a sheriff's application for funding for additional dispatchers.

At trial, Sheriff Bane testified that he provides dispatching services twenty-four hours a day, seven days a week. At the time of trial, he employed four dispatchers. Sheriff Bane indicated that, due to various factors including a shortage of personnel, his department could not cover the hours of operation necessary for the dispatchers. The trial court credited his testimony and approved the hiring of one additional dispatcher. According appropriate deference to the trial court's credibility determination and its finding that an additional dispatcher is necessary to support the department employees who are performing statutory duties, we affirm the trial court on this issue.

Detectives

Mayor Nesbitt asserts that the trial court erred in approving Sheriff Bane's hiring of an additional detective. Indeed, this Court has consistently held that section 8-20-101(a)(2) does not authorize the trial courts to authorize the hiring of additional detectives or criminal investigators. *See Smith*, 834 S.W.2d at 314; *Jones*, 1989 WL 44924 at *6. This is because "[w]e have been unable to find a statute authorizing sheriffs to charge a fee for providing detective services." *Jones*, 1989 WL 44924 at *6 ("[T]he sheriff's detectives are performing ex officio duties and . . . the budget for these services is within the discretion of the county legislative body in accordance with Tenn. Code Ann. § 8-24-111.").

It is noteworthy that the General Assembly recently amended sections 8-8-213 and 38-3-102 of the Tennessee Code Annotated, Acts effective May 9, 2005, ch. 142, § 3. In doing so, the legislature expanded the peace-keeping duties of the sheriff, adding the duty to "ferret out crimes" and to "detect . . . crime[s]." T.C.A. §§ 8-8-213, 38-3-102 (Supp. 2005). While sheriffs have long been obligated to investigate reports of crimes as part of their general peace-keeping duties, see *State ex rel. Thompson v. Reichman*, 188 S.W. 225, 228, 231 (Tenn. 1916), these amendments now expressly include detective services within the ambit of the sheriff's statutory duties. The legislature did not, however, authorize the sheriff to charge or collect a fee for providing these services. Consequently, unless and until the legislature either provides for the collection of a fee for detective services or authorizes the court to consider funding requests for ex officio services, we must hold that the trial court was without authority to approve Sheriff Bane's application for an additional criminal investigator. Therefore, we must reverse the trial court's award of one additional detective.

Equipment and Training for Officers

The trial court authorized the Smith County Sheriff's Department to hire eight additional officers: five deputies, two courthouse security officers, and one detective. Incident to this ruling, the trial court approved the expenditures necessary to outfit, qualify, and train these officers. Without citing any authority, Mayor Nesbitt asserts that the trial court erred in finding that Smith County should fund and pay for the equipment and training of the new personnel.

The issue of equipment was addressed as one of first impression in *Dorning v. Bailey*, No. M2004-02392-COA-R3-CV, 2006 WL 287377 (Tenn. Ct. App. Feb. 6, 2006). The sheriff in *Dorning* filed a section 8-20-101 application for the funding of eighteen new patrol cars. *Id.* at *1.

The trial court awarded one new patrol car and approved the purchase of additional patrol cars as those in the department's fleet exceeded 150,000 miles. *Id.* at *3. On appeal, this Court addressed the issue of whether section 8-20-101 *et seq.* of the Tennessee Code Annotated authorizes a court to approve funding for vehicles or similar equipment. *Id.* at *14-19. In doing so, we reviewed section 8-20-101 of the Tennessee Code Annotated,¹¹ finding that "the statute, by its express language, applies only to a sheriff's ability to seek additional funding for personnel and their salaries." *Id.* at *14. We also reviewed section 8-20-120 of the Tennessee Code Annotated,¹² noting that the "statute speaks only of salary expenditures, and . . . makes no mention of a court's authority to authorize the funding of vehicles or similar equipment." *Id.* at *16. Consequently, we reversed the decision of the trial court because it was unsupported by the statutory language. *Id.* at *19.

This case is distinguishable from *Dorning* and warrants a different result. In *Dorning*, the trial court authorized funding for additional patrol cars because of the sheriff's aging and dwindling fleet, not because they were necessary to equip or qualify new deputies for service; in fact, the sheriff requested funding for eighteen new patrol cars, but only asked the court to award four new deputies. *See Dorning*, 2006 WL 287377 at *1, *17. Importantly, the appellate court in *Dorning* found that the sheriff "failed to prove how the condition of his fleet [of vehicles] adversely affected his ability to perform the statutory duties for which he may collect a fee." *Id.* at *17. In the instant case, however, Sheriff Bane sought funding for equipment and training directly incident to and necessary for the employment of the additional officers awarded. Without such, the new officers will be

¹¹As noted above, section 8-20-101 reads, in relevant part, as follows:

(a) Where . . . sheriffs cannot properly and efficiently conduct the affairs and transact the business of [his or her] office by devoting [his or her] entire working time thereto, such person may employ such *deputies and assistants* as may be actually necessary to the proper conducting of such person's office in the following manner and under the following conditions, namely:

* * *

(2) The sheriff may in like manner make application to the judge of the circuit court in the sheriff's county, for *deputies and assistants*, showing the necessity therefor, the number required *and the salary* that should be paid each; provided, that in the counties where criminal courts are established, the sheriff may apply to a judge of such criminal court.

T.C.A. § 8-20-101(a) (Supp. 2005) (emphasis added).

¹²Section 8-20-120 of the Tennessee Code Annotated provides in relevant part:

Notwithstanding any other provision of the law to the contrary, county governing bodies *shall fund the operations of the county sheriff's department*. . . . In the event a county governing body fails to budget any *salary expenditure which is a necessity for the discharge of the statutorily mandated duties* of the sheriff, the sheriff may seek a writ of mandamus to compel such appropriation.

T.C.A. § 8-20-120 (2002) (emphasis added). This section provides sheriffs with a mechanism to secure from the county legislative body the additional funding authorized by a court under section 8-20-101 *et seq.* of the Tennessee Code Annotated. *Dorning*, 2006 WL 287377 at *18-19.

wholly unable to perform their statutory duties. As in *Jones v. Mankin*, we “do not read Tenn. Code Ann. §§ 8-20-101(2) and 8-20-120 so narrowly that they cannot apply” to equipment and training “required to support the personnel who are performing the statutory duties.” *Jones*, 1989 WL 44924 at *5. Under the particular circumstances of this case, therefore, we hold that the trial court had the authority to award the equipment and training directly incident to and necessary for the employment of the new officers.

Neither at trial nor in this appeal has Mayor Nesbitt disputed the cost of training, evaluating, or outfitting the additional officers awarded by the trial court; therefore, no issue is raised on appeal as to the preponderance of the evidence on this question. Nevertheless, the trial court’s order must be modified in light of our ruling with respect to the one additional detective awarded to the sheriff’s department. The trial court’s order is hereby modified to delete the cost of training or equipping the additional detective.

Increase in Salary for position of Chief Deputy

At trial, Sheriff Bane requested that the annual salary of the Chief Deputy position be increased to \$49,920.00 (\$24.00 per hour). After hearing the parties’ proof, the trial court authorized a pay increase in the position of the Chief Deputy from \$29,837.97 (\$12.85 per hour) to \$40,000.00 (\$17.89 per hour). Mayor Nesbitt contends that the proof does not warrant an increase in salary for the position of Chief Deputy in Smith County. We disagree.

Under section 8-20-102 of the Tennessee Code Annotated, a court “may allow or disallow the application, either in whole or in part, . . . and may allow the salaries set out in the application or smaller salaries, *all as the facts justify*.” T.C.A. § 8-20-102 (emphasis added). As previously discussed, the officeholder must make an initial showing that he is unable to carry out his statutory duties by devoting his entire working time thereto. T.C.A. § 8-20-101(a); *see also Boarman*, 109 S.W.3d at 291. Once this threshold showing is made, the “only limitation, currently placed upon the trial courts when adjudicating a sheriff’s application for salary increases is that the salary increase awarded by the trial court must be supported by the proof.” *Dorning*, 2006 WL 287377 at *11.

Sheriff Bane offered evidence showing the salaries of Chief Deputies in Macon County and Wilson County—the first comparable in size to Smith County and the second substantially larger. Further, witnesses testified to the numerous responsibilities assigned to chief deputies in Tennessee generally and those specifically assigned to the Chief Deputy in Smith County. Mayor Nesbitt offered no proof in rebuttal. After hearing the testimony and viewing the documentary proof, the trial court found that “there’s one glaring place that it appears to me that the pay scale is out of whack, and that is the position of the Chief Deputy’s office.” Thereafter, the trial court apparently considered the salaries in the two adjoining counties and awarded a salary at a level between the two. Upon review of the record, we cannot say that the evidence preponderates against the trial court’s ruling. Accordingly, we affirm the trial court’s decision on this issue.

Conclusion

In sum, we affirm the trial court's decision to authorize the funding of five additional road deputies, two additional courthouse security officers, five additional jailors, two additional clerks and the reinstatement of the three existing clerks, and one additional dispatcher. We reverse the trial court's decision to award one additional detective. We further hold that the trial court did not err in authorizing the funding for equipment and training of the new officers, but modify the trial court's judgment to subtract the cost of training and equipping the detective deleted on appeal. Finally, we affirm the trial court's award of an increase in salary for the position of Chief Deputy.

Costs of this appeal are to be taxed one-half to Appellant Michael Nesbitt, and his surety, and one-half to Appellee Johnny C. Bane, and his surety, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE